

COUNCIL MINUTES
TIGARD CITY COUNCIL MEETING
AUGUST 9, 2005

Mayor Dirksen called the meeting to order at 6:31 p.m.

City Council Present: Mayor Dirksen and Councilors Sherwood, Wilson and Woodruff.

- STUDY SESSION

- > Administrative Items:

- Procedural Review for the Quasi-Judicial Hearing (Agenda Item No. 7)

City Attorney Ramis reviewed procedure for the combined hearing for four annexation proposals. The purpose is to be more efficient insofar as the reading of the initial process information would not have to be done four times and people would not have to state their testimony four times. The idea is to have one proceeding with the City Council making four separate decisions after the case closes. The main thing to remember is that the City Council is deciding the land uses cases on the criteria; the fundamental conduct of the hearing is like a land use case. Findings will need to be adopted, whether the City Council approves or deny. The venue for appeal is the Land Use Board of Appeals (LUBA). City Attorney Ramis suggested that if there was a great deal of testimony, the City Council might want to make a tentative decision, give direction to staff and then staff come back with a final set of findings for the City Council to adopt.

Mayor Dirksen referred to the process as outlined on the agenda. City Attorney Ramis noted that if the City Council is prepared to adopt the final decisions for the ordinances, the staff has some amendments to the findings, which have been provided to the City Council. The proposed amendments were distributed. City Attorney Ramis noted this supplemental information addressed the requirements of ORS 222, which is the Chapter applying to the annexation procedures for these proposals.

Also distributed to the City Council was written testimony received by e-mail on August 9, 2005, from Les and Ellen Godowski, 14630 SW 139th Avenue, Bull Mountain, Oregon.

- August 18 Meeting with Senate Environmental and Public Works Staff – Tualatin River Refuge (Council received a copy of an e-mail

communication to Assistant to the City Manager Newton from the President of the Friends of the Refuge Norman Penner). Interim City Manager Prosser reviewed this invitation. Mayor Dirksen, Councilor Sherwood and Councilor Woodruff advised they would try to attend.

- Council Agenda Revised – Interim City Manager Prosser noted that Mayor Dirksen requested Consent Agenda Item 3.3b. be set over to August 23, 2005.
- Councilor Woodruff noted that the Intergovernmental Water Board meets on the second Wednesday of every month and this conflicts with his work schedule. He noted he would not be able to attend the September or October meeting. Councilor Sherwood said she could attend the September 14 and October 12 meetings.
- Council Calendar:
 - August 16 Council Workshop Meeting – 6:30 p.m. – Town Hall
 - August 23 Council Business Meeting – 6:30 p.m. – Town Hall
 - August 30 5th Tuesday Council Meeting – 7-9 p.m. – Tigard Water Auditorium

EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 6:38 p.m. to consider employment of a public officer, employee, staff member or individual agent and pending litigation under ORS 192.660(2)(a)(h).

Executive Session concluded at 7:37 p.m.

1. BUSINESS MEETING

- 1.1 Mayor Dirksen called the City Council & Local Contract Review Board meeting to order at 7:43 p.m.
- 1.2 City Council Present: Mayor Dirksen and Councilors Sherwood, Wilson and Woodruff.
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports: None
- 1.5 Call to Council and Staff for Non-Agenda Items: None

2. CITIZEN COMMUNICATION

- Thomas Bush, 13845 SW 158th Terrace, Tigard, OR 97224, said he lives in unincorporated Washington County, at the west end of Bull Mountain. He said he believes there are deficiencies in the Tigard Development Code, particularly as it appears to prioritize connectivity over safety. The Code also does not seem to recognize that the width of the road contributes to safety and this is particularly true on steep roads. He urged that something be done about this. He asked what process is in

place so someone, such as he, could contribute to advocating those changes.

Mayor Dirksen asked if Mr. Bush has some specific streets in mind. Mr. Bush noted that there is an appeal process in place on the street he is most concerned about, so he has chosen not to speak about this. Mayor Dirksen suggested that Mr. Bush contact Community Development Director Hendryx about the process.

- Mary Bush, 13845 SW 158th Terrace, Tigard, OR 97224 asked who was responsible for the upkeep of the dedicated road in a subdivision? In response to a question from Mayor Dirksen, Ms. Bush confirmed that the road is in unincorporated Washington County. The road is the responsibility of the County.
- Tyler Van Domelen and Eric Wiering, recent Tigard High School graduates, spoke to the City Council about the proposed Tigard Skate Park. They recently learned the skate park did not receive a grant they were hoping to receive. Mr. Van Domelen said he hoped there might be a "Plan B" offered by the City to help move the skate park forward. Mr. Wiering said they have noticed many towns smaller than Tigard have city skate parks. He noted the supporters of the skate park have raised \$35,000.

Councilor Sherwood noted that a number of people are working behind the scenes to help with this effort. She said that by coming to this meeting, Mr. Van Domelen and Mr. Wiering are doing what is needed, which is to get the word out to the community about the need for assistance.

Mayor Dirksen noted he is frustrated that the skate park has taken so long to move forward. He said he was disappointed that the grant was not awarded for the skate park and the City is reevaluating how to move ahead. It would be helpful if there was more of a demonstration of community support for funding for the skate park. He agreed with Councilor Sherwood that Mr. Van Domelen's and Mr. Wiering's attendance at this meeting was the best thing they could do to appeal to the community. He noted they need to make their case to the community.

- Bill Gerkin, 15885 SW Alderbrook Circle, Tigard, OR 97224, said he represented the senior community supporters of the skate park. He said he got involved because he believes that many skate boarders are at a crossroads with regard to the activities they might become involved in – some of which are unacceptable. A skate park would give these young people something to do that they want. He noted there are many other

towns that have skate parks and doesn't know why it has taken so long for Tigard. He said he has personally raised over \$6000 by contacting businesses, friends, and service organizations. He asked the City Council to assist. At this time there are about 99 contributors and 13 of those are in-kind contributors. They have about \$35,000, with a goal of \$105,000. Mr. Gerkin said they need some help from the community. Meetings are held every two weeks, yet, there are only a handful of people who attend. He asked for support of the skate park; "it's past time."

Mayor Dirksen noted his appreciation of Mr. Gerkin's efforts. He agreed that young people at this age need a healthy outlet. He said it is with some personal embarrassment that a city the size of Tigard cannot seem to build a skate park. He said he would like to see the community get behind this idea.

Councilor Sherwood added that over a third of the skate park contributors are from the Summerfield retirement community.

Councilor Woodruff thanked the core group of people that have been involved in this effort for a long time. He said he hoped that people watching this meeting who were not aware of this effort, would do what they could to get the word out about this need.

- Gretchen Buehner, 13249 SW 136th Place, spoke about library parking issues. A number of spaces designated for compact cars are continually being used by people driving SUVs. For example, this evening there were two spaces that could not be used because SUVs were parked in the compact car area and were too large for the spaces. She reported that at 7:10 p.m. this evening, there were 15 SUVs parked in the compact car spaces. This is causing back ups in the parking lot.

Interim City Manager Prosser said this would likely take policing action. He will check with the Police Department to determine what could be done.

Councilor Woodruff noted there isn't enough parking at the Library and that if Wall Street is constructed, there are plans to provide additional parking spaces.

- Ken Henschel, 14530 SW 144th Avenue, Bull Mountain, OR, said he was speaking as CPO 4B Chair and that they collected some money for the skate park. In response to his inquiry, he was advised he could give the money collected to Rich Carlson, Chair of the Skate Park Task Force. Mayor Dirksen noted his appreciation of the CPO 4B members' contribution.

- Follow-up to Previous Citizen Communication (from the July 26, 2005, City Council meeting):

Interim City Manager Prosser noted Gretchen Buehner spoke about Bull Mountain Road being brought up to City standards for that section of this road that is within the City of Tigard. Ms. Buehner suggested the City take over jurisdiction of part of the road. Interim City Manager Prosser noted that the City Council plans to meet with Washington County officials on August 16, and suggested the topic could be discussed at that time.

Interim City Manager Prosser said that Mr. Frewing had raised concerns about condition of a property in his neighborhood. The subject property is under continuing enforcement action, which is now in Municipal Court. Mr. Frewing had asked for additional information about where this was in the court system process – staff has provided this information to him.

Interim City Manager Prosser noted Mr. Frewing also spoke about concerns about a development in the unincorporated Metzger area where he would like to see trail property set aside through area. Interim City Manager Prosser said, unfortunately, neither the County nor the City Master Plans included an area for a trail at this location. Therefore, this is an issue that cannot be addressed. Mr. Frewing has also spoken to the County.

Tigard Youth Advisory Council President Rob Williams reviewed the following Consent Agenda items:

3. CONSENT AGENDA:

- 3.1 Approve Council Minutes for July 12, and 19, 2005
- 3.2 Receive and File:
 - a. Council Calendar
 - b. Council Meeting Tentative Agenda
- 3.3 Local Contract Review Board:
 - a. Award Contract to Brix Paving for the Construction of the FY 2005-06 Pavement Major Maintenance Program (PMMP) – Phase 1
 - b. ~~Authorize Reimbursement to Venture Properties for Waterline Construction Through Summit Ridge Subdivision Development~~

Interim City Manager Prosser noted that Item 3.3b above has been removed from the Consent Agenda; it will be resubmitted to Council for consideration on August 23, 2005.

Motion by Councilor Wilson, seconded by Councilor Sherwood, to approve the Consent Agenda with Item 3.3b removed.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

4. METRO COUNCILOR HOSTICKA TO PRESENT INFORMATION ON METRO'S OPEN SPACES, TREASURED PLACES CELEBRATION

Metro Council President Bragdon was present to review this item as Councilor Hosticka was out of town, but sent his regards. President Bragdon's presentation included the following:

- It's been 10 years since the voters approved the greenspaces funding.
- More than 8000 acres of greenspaces has been acquired.
- Some local share money went directly to local jurisdictions, including Tigard.
- There was a focus on the Fanno Creek greenway to connect 15 miles of trail.
- Tualatin River has access points for canoe trips. Five sites have been purchased along the Tualatin, including a location in Tigard.
- Eight acres have been purchased adjacent to Cook Park.
- A brief review of sites acquired to supplement the natural areas throughout the region.
- Celebration in the first 10 days of September to thank the voters, which will include a series of events.
- Groups are meeting and discussing the possibility of renewing the greenspaces measure in 2006.
- Commitment to a local share component for a future measure.
- Metro officials will return to the Council in the fall to submit proposals/ideas for a renewed funding measure.

Councilor Woodruff asked how many of the 8000 acres are in the Tigard area. President Bragdon noted about 400 acres are located along the Tualatin River, and in Tigard City limits, there were about 50 or 60 acres acquired. He noted there are some large sites within a short drive and referred to the Cooper Mountain site of 280 acres just outside of Beaverton. Community Development Director Hendryx noted the total pass-through amount to Tigard was \$758,000. Tigard purchased 16 acres within the City and built 1800 lineal feet of greenway trails. In addition, 23 acres for greenspaces were acquired using Metro funds (Brown property, Woodard Park property).

Councilor Woodruff noted that one of the City Council's goals is to increase the amount of parks and open spaces and the City will continue to look to Metro to help wherever possible. Councilor Woodruff referred to the skate park and asked if there were any additional dollars available for this project? President Bragdon said there were no funds remaining. It is hoped the new bond measure would be before the voters in 2006.

Mayor Dirksen asked if the focus will again be on greenspaces and open spaces. President Bragdon reported that the regional money focused on natural areas; however, the funding earmarked for local jurisdictions had more flexibility.

President Bragdon confirmed Councilor Wilson's statement that the package to be presented to voters would be put together over the next few months and could possibly be more ambitious. President Bragdon noted they realize there are other needs in the region requiring resources including law enforcement and education that communities are addressing as well. While not advocating one way or the other, Councilor Wilson asked if Metro would consider a restriction that purchases be inside the urban growth boundary. President Bragdon confirmed this would be discussed. He noted larger, less expensive sites are often located outside the urban growth boundary.

5. SET OVER TO THE AUGUST 23, 2005, CITY COUNCIL MEETING THE CONSIDERATION OF THE FINAL ORDER REGARDING THE APPEAL OF CONDITIONAL USE PERMIT FOR THE TIGARD FIRST BAPTIST CHURCH EXPANSION

ITEM ON APPEAL: On April 25th, 2005 the Tigard Hearing's Officer held a public hearing to consider an application for conditional use approval to construct a 22,500 square foot expansion of the existing church and associated parking in three phases. As part of Phase 2, the applicant proposed to relocate the existing driveway on SW Gaarde Street. The Hearing Officer adopted findings approving the Conditional Use Permit and Sensitive Lands Reviews and denied the requested Adjustment to the access spacing standards. An appeal was filed on May 25, 2005 by the owner and applicant, on the basis that the Hearing's Officer misconstrued the applicable law. More specifically, the appellant's argue that the Hearing Officer's decision failed to balance the approval criteria.

LOCATION: 11075 SW Gaarde Street; WCTM 2S103DC, Tax Lot 1100.

ZONE: R-3.5: Low-Density Residential District.

REVIEW CRITERIA BEING APPEALED: Community Development Code Chapters 18.370 and 18.705.

Community Development Director Hendryx advised the final order was not presented in sufficient time to prepare it for the City Council's consideration

at this meeting. Staff recommends City Council continue this item to August 23, 2005.

Motion by Councilor Sherwood, seconded by Councilor Woodruff, that the consideration of the final order appeal of the Conditional Use Permit for the Tigard First Baptist Church expansion be set over to August 23.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

6. INFORMATIONAL PUBLIC HEARING – FORMATION OF SANITARY SEWER REIMBURSEMENT DISTRICT NO. 35 (SW ASH AVENUE)

- a. Mayor Dirksen opened the public hearing.
- b. City Engineer Duenas presented the staff report. His review included a PowerPoint presentation, which is on file in the City Recorder's office. His review included a history of the sewer reimbursement program designed to extend service to all non-sewered areas of the City. For Fiscal Year 2005-06, it is projected about 151 new services will be established. If formed, this District would provide nine connections, and is the last area in this part of the City that does not have sewer service.

A neighborhood meeting was held on July 6, 2005. At that time staff presented the program to the District residents to answer questions and address concerns.

The estimated project cost is \$110,215. The estimated reimbursement fee per owner is about 55.5590 cents per square foot. City Engineer Duenas explained the incentive program whereby the City participates in paying for a portion of the costs if a District property connects to the sewer within three years of finalization. Additional fees include a \$2235 connection/inspection fee and approximately \$50 every two months as a charge for operation and maintenance of the entire sewer system. There are also costs for installation and connection to the sewer.

The project will begin this fall. Final costs will be based on the actual construction costs. Finalization of the District will be brought to the Council after all work has been completed and the actual costs are known.

Councilor Woodruff asked if all the property owners were present at the informational meeting on August 9. City Engineer Duenas said he understood that most property owners were present. He said some concerns were brought up at that time. He advised that one of property owner for one of the lots to be included in the District indicated they could hook onto sewer at Garrett Street, so this lot was removed from the District.

c. Public Testimony

- Cleon Cox III, 13580 SW Ash Avenue, Tigard, OR 97223, advised he attended the July 6 informational meeting, as did most of the neighbors. He said they were told that if a majority does not want enter into this, it will not go through. City Engineer Duenas advised that was not correct. He said the District would be formed whether people want to hook on or not, but noted that people do not have to hook onto the sewer. Those that want to hook on, must pay their share as provided in the program along with the attendant fees. City Engineer Duenas explained the City's program is to extend sewer to all unsewered, but developed properties of the City. He noted the previous program was based on who needs the sewer, but if one person experiences a failed system, this is basically a reason to extend sewer to an area. The City decided to develop a systematic approach, which resulted in a five-year program.

Mr. Cox and City Engineer Duenas discussed what constitutes a failed system. Mr. Duenas confirmed that if a system fails, the County does not issue permits for a new septic system if sewer is available.

Mr. Cox asked if an environmental impact study was done to determine what the cost is if everyone needed to replace the fields. Is it more cost effective than extending the sewer system? City Engineer Duenas said the City is being proactive by providing sewer to residents who might need it. The incentive program is available to encourage people to hook on earlier; however, a property owner is not required to hook on. City Engineer Duenas said it is environmentally responsible to extend sewer to areas and not to depend on septic systems. There was discussion on why this was environmentally preferable.

Mr. Cox asked why a full bond measure could not have been placed before the voters for providing sewer. He said this is impacting people who are on fixed incomes. Mayor Dirksen said

he did not know that this was not reviewed earlier. He referred to the creation and implementation of the program, which had been reviewed by Council members some years earlier. In effect the program is voluntary, no one is required to hook up to the sewer. If one does not hook up within 15 years of finalization of the district, no payment of the installation is required. City Engineer Duenas added there is a fairness issue in that other residents have paid for their sewer service through one means or another. Why should the rest of the City pay into a bond to extend sewer to people who have already paid for their own? Mr. Cox argued that this didn't make sense and noted other instances where he may or may not use services; i.e., the library and schools. He said he understands the City has to determine how to pay for this but noted he would have preferred for other alternatives to have been made available to the property owners.

Discussion followed on fees. The connection fee and the sewer fee that's included in the water bill are based on water usage. Mr. Cox said his water usage would increase because his current leach lines water trees in his yard.

Mr. Cox noted he talked with the City about this issue in 2001 and felt that the attitude was that it was going to happen regardless. He questioned whether a sewer system was actually environmentally preferable. He said he had not heard anything additional on this program until recently. City Engineer Duenas advised that a citywide meeting was held when this program was started to explain how the program would work. Mr. Cox said he was not aware of the meeting and questioned how people were notified. City Engineer Duenas referred to some of the means of notification including newspaper announcements and an announcement in the City's newsletter, the *Cityscape*.

Mr. Cox said the majority of the people in this proposed district are upset about this proposal. He referred to other issues he has had in the past, including speed humps, and questions whether appropriate study is being done.

Mr. Cox said the property owners really have no options if their septic tanks fail.

Mr. Cox submitted a letter from Sean and April Yarger, 13585 SW Ash Avenue, Tigard, Oregon noting their opposition to the formation of the District. This letter is on file in the City Recorder's office.

d. Staff Recommendation

City Engineer Duenas advised that staff recommended City Council approve a resolution forming Reimbursement District No. 35, SW Ash Avenue.

e. Council Discussion

Councilor Woodruff asked about the number of districts formed. City Engineer Duenas advised that 659 services were identified and there are about 300 remaining. He noted about 150 services are planned for this year. Approximately ten districts have been formed under the current reimbursement district program. People will hook on as they feel the need or want to participate in the incentive program. Within these finalized districts, the sewer is available when wanted and the City does not need to be in a reactive mode when a property owner has a need to connect to the sewer.

Councilor Wilson noted the City Council continues to hear comments similar to those raised by Mr. Cox. He said the concerns are related to the amount of money required to hook up to the sewer system. Councilor Wilson said he continues to think the program is a good deal and it's voluntary unless someone's system fails.

Councilor Sherwood noted she has had people tell her that they were appreciative of the sewer reimbursement program, which was available to them when their system failed.

f. Mayor Dirksen closed the public hearing.

g. Council Consideration:

Motion by Councilor Wilson, seconded by Councilor Sherwood, to adopt Resolution No. 05-51.

RESOLUTION NO. 05-51 – A RESOLUTION ESTABLISHING
SANITARY SEWER REIMBURSEMENT DISTRICT NO. 35 (SW
ASH AVENUE)

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

7. PUBLIC HEARING (QUASI-JUDICIAL) TO CONSIDER ANNEXATION OF THE FOLLOWING FOUR PROPERTIES:

FILE NO.:	ZONE CHANGE ANNEXATION (ZCA) 2004-00004
FILE TITLE:	MOUNTAIN VIEW ESTATES SUBDIVISION ANNEXATION
REQUEST:	The applicant is requesting to annex two (2) parcels of land containing 6.94 acres into the City of Tigard.
LOCATION:	12415 SW Beef Bend Road, WCTM 2S110CB, Tax Lot 500; and (No site address), WCTM 2S110CB, Tax Lot 100.
FILE NO.:	ZONE CHANGE ANNEXATION (ZCA) 2005-00001
FILE TITLE:	ARLINGTON HEIGHTS 3 SUBDIVISION ANNEXATION
REQUEST:	A request to annex three (3) parcels of land containing 16.97 acres into the City of Tigard.
LOCATION:	On the north side of SW Beef Bend Road and the southern terminus of SW Summerview Drive. WCTM 2S109DA, Tax Lot 2100; and 2S110CB, Tax Lots 600 and 700.
FILE NO.:	ZONE CHANGE ANNEXATION (ZCA) 2005-00002
FILE TITLE:	WILSON RIDGE SUBDIVISION ANNEXATION
REQUEST:	A request to annex two (2) parcels of land containing 2.68 acres into the City of Tigard.
LOCATION:	13350 and 13400 SW Bull Mountain Road; WCTM 2S109AC, Tax Lots 100 and 200.
FILE NO.:	ZONE CHANGE ANNEXATION (ZCA) 2005-00003
FILE TITLE:	ALBERTA RIDER SCHOOL/SUMMIT RIDGE SUBDIVISION ANNEXATION
REQUEST:	Annexation of 56 parcels containing approximately 20.75 acres into the City of Tigard.
LOCATION:	<u>Alberta Rider School:</u> WCTM 2S109AC, Tax Lot 2100 and 2S109AD, Tax Lot 1300; and <u>Remaining Portions of Summit Ridge Subdivision:</u> WCTM 2S109DA, Tax Lots 8500, 8600, 8700, 8800, 9400, 9500, 9600, 9700, 9800, 9900, 10000, 10100, 10200, 10300, 11500, 11600, 11700, 11800, 11900, 12000, 12100, 12200, 12300, 12400, 12500, 12600, 12700, 12800, 12900, 13000, 13400 and 13500, and WCTM 2S109DB, Tax Lots 1000, 1900, 2100, 2200, 2300, 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3300, 3400, 3500, 3600, 3700, 3800, 3900 and 4000.

ZONING OF ALL PARCELS: R-7: Medium-Density Residential District. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of

10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.

APPLICABLE REVIEW CRITERIA: The approval standards for annexations are set out in Community Development Code Chapters 18.320 and 18.390, Comprehensive Plan Policies 2 and 10; ORS Chapter 222; and Metro Code Chapter 3.09.

Associate Planner Tracy of the Community Development Staff read the description of the four annexation proposals. Associate Planner Tracy noted this annexation hearing consists of four separate requests. The staff's presentation and the public testimony will be consolidated into one hearing. The City Council will then need to take separate actions on each of the four applications.

Associate Planner Tracy referred to a PowerPoint presentation, which is on file in the City Recorder's office. He reviewed a map of the current City limits and the proximity of the proposed annexation areas. He then described the areas to be annexed. All of the properties are in the general area between Bull Mountain Road and Beef Bend Road. The total area of the four annexations areas is 47.34 acres.

For the Mountain View Estates annexation, the previous owners and current owners petitioned the City for annexation and earlier subdivision approval for 22 lots. Prior to those lots being sold, annexation must occur. There are no longer any registered voters within this annexation territory.

For Arlington Heights 3 annexation, the current owners and all four registered voters have sign a petition for annexation. This property is in the early stages of subdivision review and, if approved, will be required to be annexed. There are 64 lots being proposed.

At this point, City Attorney Ramis noted the hearing had not yet been opened. Because the four hearings have been combined, the process is unusual. City Attorney Ramis referred to the agenda, which was also provided to the public. He recommended the Mayor begin by opening the public hearing. City Attorney Ramis said he would then describe the rules and procedures before coming back to finish the Staff Report.

- a. Mayor Dirksen opened the public hearing.
- b. City Attorney: Rules of Procedure

City Attorney Ramis noted for land use hearings, City of Tigard begins the process by reading a set of rules and processes so that participants in the hearing understand the rules and procedures. He noted if anyone had any questions about the process, they should not to hesitate to ask.

A copy of the rules of procedure of tonight's hearing has been available at the entrance of the hearing room. The staff report on this hearing has been available for viewing and downloading from the City's website and a paper copy of the staff report has been available in the Tigard Public Library for the last seven days. The Council's role in this hearing is to make a land use decision under existing laws. The Council cannot change the law for the land use application now under consideration. However, because these applications are for annexations, the City Council may also consider issues other than the applicable land use criteria and those are the criteria identified in the staff report.

Any person here tonight can offer testimony. Please wait until you are asked to speak by the Mayor and try to limit your remarks to the applicable approval standards for the application. Members of the City Council will be asked whether they have any conflicts of interest at the beginning of the hearing. And, if a Council member has an actual conflict the Council member will not participate. Council members must declare any contacts about this case with a member of the public. Council members must also declare if they have independent knowledge of relevant facts, such as a visit to the site in question. The Council member who describes ex parte contacts or independent information may still participate in the decision. After the discussion of conflicts and ex parte contacts, any person may challenge the participation of the Council member or rebut the statements made. The Council member in question may respond to such a challenge.

Tonight the staff will summarize the staff report and then the applicant and those in favor of the application will testify. After that, witnesses who oppose the application or have questions or concerns will testify. If there is opposition or if there are questions, there will be a response from City staff. The Council members may also ask the staff and witnesses questions throughout the hearing until the record closes.

After all testimony is taken, the Council may ask additional questions of the staff. After the record is closed, the City Council will deliberate about what to do about the application. During the deliberations, the City Council may reopen the public portion of the hearing if necessary to receive additional evidence before making a decision. You may testify orally or in writing before the close of the public record to preserve your right to appeal the Council's decision to the Land Use Board of Appeals. Failure to raise an issue clearly enough so that the Council understands it and can address the

issue, precludes an appeal on that issue. Failure to raise Constitutional or other issues related to the proposed Conditions of Approval, with sufficient specificity to allow a response precludes an action for damages in Circuit Court. Please do not repeat testimony offered by yourself or earlier witnesses. If you agree with a statement of an earlier witness, please just state that fact and add any additional comments of your own. Also, please refrain from disruptive demonstrations in the case. Comments from the audience will not be part of the record.

When you are called to testify, please come forward to the table. Please begin your testimony by giving your name, spelling your last name, and give your full mailing address including zip code. If you represent someone else, please indicate that. If you have any exhibits you want the Council to consider, such as a copy of your testimony, photographs, petitions, or other documents or physical evidence, at the close of your comments, you must hand in all the exhibits to the Recorder, who will make them part of the record. The staff will keep the exhibits until appeal opportunities expire, and then you can ask them to return your exhibits.

Testimony, evidence, and arguments must be directed at the criteria identified in the staff report. Those are Community Development Code Chapters 18.30 (City Attorney clarified after his remarks this should be 18.320) and 18.390, Comprehensive Plan Policies 2 and 10; Metro Code Chapter 3.09, and ORS Chapter 222.

Tonight the Council is conducting a hearing on four applications as a combined proceeding. This will permit anyone who wishes to address more than one item from having to testify multiple times. Please identify which annexation proposal proceeding you are testifying about. The Council will deliberate on each separately after the close of the proceeding.

c. Declarations or Challenges

City Attorney Ramis asked if any members of the Council wish to report any ex parte contact or information gained outside the hearing, including any site visits? None reported.

City Attorney Ramis asked if all members familiarized themselves with the application? All members indicated they were familiar with the application.

City Attorney Ramis asked if there were any challenges from the audience pertaining to the Council's jurisdiction to hear this matter or

is there a challenge on the participation of any member of the Council? There were no challenges.

d. Staff Report

Associate Planner Tracy recapped his statements for Mountain View Estates and Arlington Heights 3, which he began prior to the public hearing being opened.

For Wilson Ridge, the current owners are both registered voters and have signed the annexation petition. This property is pending subdivision approval for 14 lots.

For the Summit Ridge and Alberta School site: When the Alberta Rider school was approved, a condition of that development was to annex prior to allowing occupancy of school buildings. The School District has signed the consent forms as property owners to allow the annexation. Ms. Rider resides in a life estate tenancy in an area on the site and is the sole registered voter in the original annexation territory. Since Mrs. Rider has not consented to the annexation and has not signed a petition for the annexation, the City is unable to annex the life estate area without holding an election of voters in that territory. As a result, the boundaries have been revised to reflect the exclusion of this area from the annexation request. He referred to where this was located on a map on display in his PowerPoint presentation.

Summit Ridge was approved when it did not abut the City limits, so annexation was not required. However, when Arbor Summit to the north of Summit Ridge was annexed in 2004, Bella Vista, which lies to the south of Summit Ridge also petitioned for annexation, and through a double majority method, a portion of Summit Ridge was annexed. Around the same time, a subdivision plat for Summit Ridge was recorded, which resulted in some of the newly formed lots being partly in city limits and partly out. This annexation territory currently consists of six owners, four of whom have consented to the annexation. Staff reviewed voter registration records this morning and found that, with the exception of Ms. Rider, there are no other registered voters residing within this annexation area. Associate Planner Tracy reviewed how the lots were positioned both in and outside the city limits as a result of an earlier annexation approval.

Based on additional input from legal staff, supplemental findings were prepared consistent with ORS Chapter 222. Also staff recommends that additional language be added to the proposed ordinances to adopt the supplemental findings, along with the findings in the staff

reports. These additional findings have been distributed to Council members and are also available to the public at the rear of the room.

For the Alberta Rider/Summit Ridge annexation, a copy of the proposed revised boundaries excluding Ms. Rider's life estate tenancy have also been distributed to the City Council and made available for the public.

e. Public Testimony

Mayor advised of receipt of written testimony from Les and Ellen Godowski, which will be entered into the record.

Mayor Dirksen noted that sign-in sheets have been provided for each annexation proposal.

Mayor Dirksen clarified that testimony will be taken for each annexation area; however, it is appropriate that if someone wants to comment on other applications, then the City Council should hear the testimony instead of making people come back and forth.

1. Mountain Estates Subdivision Annexation

Applicant – Not present.

Proponents – None

Opponents

City Recorder's Note: All opponents, on the testimony sign-in sheet for this annexation proposal, indicated their testimony applies to all annexations for Council Agenda Item 7 and their testimony is hereby incorporated by reference.

* Charles Radley, 15729 SW Colyer Way, Bull Mountain, OR 97224 testified that his comments were general comments for all of the annexations. Mr. Radley's testimony included the following:

- He would like to learn more after the hearing about the process used for obtaining consent from the various landowners. He hoped this was completely voluntary.
- He said he was curious about the practice of issuing permits with a condition for annexing to the City. How appropriate is this?

- He referred to the Dolan vs. City of Tigard case language pertaining to conditions on permits and an essential nexus; that is, a logical connection between the governmental interest to be served and the conditions to be imposed on the landowner. He said he finds it difficult to understand the relevance about why a landowner needs to annex if all they need is a building or occupancy permit. He said he would like to learn more about this.
 - He referred to Rhode Island information. (A copy of this information is on file with the City Recorder.)
 - He asked if there was any pressure exerted on the property owners to annex.
 - He requested the record be kept open for seven days for additional testimony.
- Mayor Dirksen noted, for clarification on process, that the City Council would receive testimony and then the City Attorney, or whoever is appropriate, will respond to questions.

✕ Julie Russell, 12662 SW Terra View Drive, Bull Mountain, OR 97224, presented the following as testimony:

- She asked why this hearing is being conducted differently than previous annexation hearings and how this would affect the LUBA appeal process. Does it make it more expensive or difficult to file? She said she also requested that the hearing be continued for at least seven days based on the revised map and the additional findings presented this evening.
- She noted her agreement with Mr. Radley with regard to conditional use permits.
- She referred to the Alberta Rider conditional use permit. She said she found it upsetting that if the school does not agree to annex, the City of Tigard will not do the final inspection and the school will be delayed. She said the City of Tigard has caused delays and cost the taxpayers of that District at least \$1.2 million.
- She said she would have hoped that the City Council would have considered the defeat of the annexation vote in November 2004 for Bull Mountain. This is in direct opposition.
- She said Mark Padgett, President of the Planning Commission has openly stated in a Planning Commission meeting that his strategy is to surround Arlington Heights and annex them without vote. She

said she finds it frustrating that a City would have that policy and that a Planning Commissioner would have made that comment during a meeting.

- She noted in the last Oregon legislative session, several bills were passed to clarify annexation law. House Bill 2484, which guaranteed the dual majority vote and Senate Bill 887, which prevents island annexations and some companies from being annexed to Beaverton. She said she would hope that Tigard would follow the intent of the law and the vote and will of the people.
- She said she had some concerns with the map. She noticed that the map she received appears to be incorrect because it "talks about" Alberta Rider and part of Bull Mountain Road being annexed. She noted a line in the middle of Beef Bend Road; she was under the impression that Beef Bend Road and Bull Mountain Road were under the jurisdiction of Washington County. She asked if the map was in error or if this was a change. There was no notification of a change in road jurisdiction.
- She referred to Tigard's findings on Comprehensive Plan Policy 2.1.1 stating that every property owner affected by this annexation be notified. She said every owner in Arlington Heights will be affected by the annexation, because they will be completely surrounded if all annexations take place, and they will be in an island. Not every property owner was notified.
- She said she opposed the annexations, not to delay the building permits being issued, but because of the annexation process itself. She said the school and builders should not be held hostage to consent to annexation.
- She referred to findings on policy 10.2 and that the Tigard staff report admits that none of the annexations eliminate pockets or existing islands, but they do create irregular boundaries and create islands. She said she believed that in the past, Council has said they would not annex to create islands and this is in direct opposition.
- She said she disputes the Community Development Code, Section 18.320.020 as this area has been identified to be park deficient by Washington County and the Bull Mountain Community Plan and the City of Tigard. There are no solutions associated with these

annexations to remedy to that situation. By allowing additional homes, it creates more deficiencies.

- She said Bull Mountain Road and Beef Bend Road are the only access points to Highway 99. Highway 99 is already at capacity at every intersection through Tigard. Additional building permits will only overload.
- She noted the Police did not make any comments. She wondered if the Sheriff's Department was notified of these annexations and what their comments would be.
- She referred to the change of zoning and disputed the information. The Bull Mountain Community Plan identifies R-6, six units per acre, not 7.
- She questioned why Summit Ridge was allowed to develop at R-7 before the annexation process. According to Tigard's Code, zoning is not supposed to change until the annexation takes place.
- She asked why Alberta Rider and Summit Ridge were being annexed together since Alberta Rider is owned by public entity and Summit Ridge is owned by a developer.
- She asked that the City Council consider all of these issues and to vote to proceed with the annexations appears to be bad public policy to continue annexing against property owners' wishes. This is absolutely what the City is doing in this process by requiring builders to annex and not allowing property owners to vote on it.
- She asked how Arlington Heights 3 can annex into their Homeowners' Association and not have a double majority vote of the property owners who already live in the subdivision?

- x Scott Miller, President Mountain Gate Owners Association, 15415 SW Ashley Drive, Bull Mountain OR 97224, presented testimony which he also submitted in written format. A copy of the written testimony is on file in the City Recorder's office. He noted he would be adding to his written comments after going through his prepared statement:

- He advised he agreed with the prior two speakers and would like to incorporate their remarks into his as part of the record.
- He said he talked to Tigard Planning Commissioner Gretchen Buehner prior to the meeting. He asked her about conditional use permits and whether the City of Tigard was telling landowners that they could not

receive building permits or open the school, if annexation did not go through. He said she unequivocally told him, that this was false. He said this was in contradiction to what had been presented tonight during the staff report. He said he was concerned if there was misinformation.

- He said he had a significant problem with conditional use permits requiring annexation before building occurs or before the school is opened. He questioned whether the City was in violation of the law.
- He referred to the findings which make reference to ORS 222.125 and the need to obtain consent of the owners. How can they give consent if they are told they do not have permission to build or open the school unless their consent is given? He said that consent was never given and any proceedings to create annexation would be invalid. He said consent must be given freely.
- He said he was before the City Council tonight primarily because he represents 200 homeowners who are really concerned. They don't want to be part of the City of Tigard. They are concerned about where their money goes and getting value for their money.
- Before the City of Tigard goes forward with a plan to annex people who do not want to be annexed, he asked for this to be reevaluated. Does it make sense to everyone, or does it just make sense to the coffers of the City of Tigard?
- He said Ms. Buehner told him that land was being proposed to be purchased on Bull Mountain. He would like to know if the City of Tigard is buying land outside the City of Tigard with the intent to be able to say to the residents of Bull Mountain, "Here's your park." Or, with the intent to be able to use that as a lever for additional annexation.
- He asked the Mayor if the City of Tigard has a plan to continue annexation on Bull Mountain?

Mayor Dirksen advised response and rebuttal remarks would be made after testimony is given.

- × Lisa Hamilton-Treick, 13565 SW Beef Bend Road, Unincorporated Bull Mountain, advised she is one of the founders of the Friends of Bull Mountain. She said she is a citizen of Washington County and advised they were her elected officials. Her comments included the following:

- She said many things have changed over the past two years. The City does not seem to recognize or respond to the changes.
- She said 89 percent of the residents of unincorporated Bull Mountain voted against annexation to the City of Tigard.
- More than 92 percent of the people on the south slope were opposed to annexation.
- The 2005 State Legislature passed several bills. HB 2484 secured a dual majority vote in all future ORS 195 annexations throughout the state. Friends of Bull Mountain participated actively and was pleased to restore fairness in this process for the State of Oregon. HB 2722 removed the veto power of cities within a three-mile distance of territories and now allows unincorporated communities to have a say about who they wish to have govern them – not to avoid paying taxes or providing services. It allows them to explore incorporation as a city. SB 887 recognizes the urgent need for annexation reform – to stop the very thing the City of Tigard continues to do. There is going to be a moratorium on forced annexation in certain areas prompted by Beaverton's aggressive annexation of roads to intentionally island areas in a territory and eliminate all rights of residents in those areas to have a say in their future governance. Actions by the City of Beaverton got a lot of attention by elected officials and laws are changing; task forces are being formed. It is not "business as usual."
- She referred to Measure 37. It is clear that property owners want a say on who governs their community and how their property is to be used.
- 100 concerned residents attended a CPO meeting in June where Friends of Bull Mountain and others spoke about a desire to explore all options for future governance. That is not to say the people on Bull Mountain do not want to pay their fair share. People in unincorporated areas that are rapidly urbanizing often want to be able to have a say in who will govern their community, how much their taxes will be increased, and where that money will be spent.
- She noted the vocal, strong opposition to annexation to Tigard at this CPO meeting. She noted Councilor Wilson attended this meeting and thought Community Development Director Hendryx was also there.

- She encouraged the City to halt the practice of aggressively annexing, by piecemeal, Bull Mountain, by creating irregular boundaries that are difficult to service and by withholding permits in exchange for annexation.
 - She encouraged the City of Tigard to be watchful of the Task Force that will be forming out of the legislative session. She guaranteed that the residents of Bull Mountain will do everything in their power to influence fairness in annexation reform.
 - She said that what the City does here affects cities and territories throughout the state.
 - HB 2484 was passed because of the overwhelming involvement of the people who are not going to tolerate the kind of aggressive annexations that they have experienced.
 - She noted the new legislative session will begin again in a year and a half and she guaranteed that the decisions made will influence how the Friends of Bull Mountain testify in Salem for fairness in all annexation decisions throughout the state.
 - She said it was time for a change in the City's policy and she hoped it was an opportunity for the City to take a different look in the way it is approaching enlarging.
- ✕ Ken Henschel, 14530 SW 144th Avenue, Unincorporated Bull Mountain, OR 97224 testified that he is the Chair of CPO 4B, but tonight he was speaking as a citizen. His comments included:
- He said he would like to incorporate by reference the comments of the previous speakers in opposition.
 - He noted at a recent CPO meeting, he apparently incorrectly spoke when he called Tigard the planning authority for unincorporated Bull Mountain. Several Tigard employees advised him that Tigard is the contractor implementing the County's plan. If that is the case, he said he is confused. He said he reviewed the intergovernmental agreement, the urban services agreement, the urban planning area agreement and looked at local, state, and federal codes/ordinances. He has not found any place that give a contractor the authority to force governance on an area as a precondition to approving building or occupancy permits.
 - He said he knew the property owners had requested annexation; however, in talking to several of them, it is

his understanding that they are only requesting that because they had no choice. If they do not annex, they will not get their permits. He said he thought the process was flawed.

- He said the annexation represents an unconstitutional taking as these annexations are coerced.
- The overwhelming majority of Bull Mountain residents opposed annexation in the fall election and he remains disappointed that Tigard continues its annexation assaults on Bull Mountain and continues to fail to respect the wishes of the area residents.
- As the previous speakers said, there is no legitimate reason that Tigard could not approve permits without requiring annexation. He was saddened that the City of Tigard is not rethinking its strategy to instead build bridges with the community.

2. Arlington Heights 3 Subdivision Annexation

Applicant

- × Tom Weber, 12755 SW 69th Avenue, Suite 100, Portland, OR 97223 testified that he is the owner and developer of Arlington Heights 3. His comments included:

- He supported the annexation.
- He said as he listened to the previous testimony and whether required to or not, he would choose to annex to the City of Tigard.
- He said he wanted the residents of this subdivision to receive the benefits of being citizens of the City of Tigard.
- He said "we" own the property to be annexed and it is their desire to be annexed without delay.
- He urged the City Council to approve the annexation as any more delay on the project will cause him to miss this season.
- He said that if the residents of Bull Mountain, and he said he was speaking for his project, are to receive the benefits of the City of Tigard, they should be residents of the City of Tigard and be responsible for the bill for the City of Tigard.
- He said he had other projects on Bull Mountain and elsewhere in the City and, if they were qualified to be annexed, he would do that too.

- He said he knows most of the other developers and it would be interesting to hear from the other developers about how they feel about this. He said he does not feel as if he is being coerced.

Opponents

City Recorder's Note: All opponents, on the testimony sign-in sheet for the Mountain View Estates annexation proposal, indicated their testimony applies to all annexations for Council Agenda Item 7 and their testimony is hereby incorporated by reference.

Mayor Dirksen noted Lisa Hamilton Treick was signed in to speak on this item. She said she would not comment on this annexation but would like to comment on one of the other annexation proposals.

3. Wilson Ridge Subdivision Annexation

Applicant

- × John Marquart, 9600 SW Oak Street, #230, Portland, Oregon 97223 and Al Jeck, 9600 SW Oak Street, Portland, Oregon 97223 testified representing Alpha Community Development. Mr. Marquart's advised they were the developers of Wilson Ridge. Mr. Marquart advised:

- He echoed Mr. Weber's comments that they believe it is a choice that they willingly make to be annexed.
- They acquired the amicable consent of both the registered voters on the site where they intend to construct a 14-lot subdivision.
- This subdivision recently received approval, with conditions. One of the conditions is for the annexation to the City of Tigard, which they were more than happy to do.
- He said he contends that their annexation is not an island annexation or an irregular annexation. It is simply a southerly extension of the Three Mountain Estates subdivision which is already in the city limits, which is why he believes the Tigard Police Department signed off on this annexation.
- He urged the City Council to approve the annexation.

Mr. Jeck added that he urged the City Council to approve the annexation and advised they would be available to address any questions.

Councilor Woodruff referred to testimony where people have stated they believe there is coercion in that the developer cannot go forward unless they agree to annex and that this is unfair. Councilor Woodruff asked if the annexation was something Mr. Jeck would want whether or not it was required for the development process. Mr. Jeck said, "Yes, it is."

Opponents

City Recorder's Note: All opponents, on the testimony sign-in sheet for the Mountain View Estates annexation proposal, indicated their testimony applies to all annexations for Council Agenda Item 7 and their testimony is hereby incorporated by reference.

- × Lisa Hamilton-Treick asked to receive a current copy of the map of the unincorporated area of Bull Mountain, including all of Bull Mountain and Beef Bend Roads to demonstrate where the City's' jurisdiction begins and ends. The maps they have are "in chunks" and she said she has never seen an inclusive map that shows what the City is taking in with regard to Bull Mountain and Beef Bend Road. She said it would help them understand contiguous connections. Associate Planner Tracy indicated that a map could be furnished. The maps received in the notice were general vicinity maps and detail is not shown to the level of lots. The annexation lines are shown on tax maps and those can be provided.

Ms. Hamilton-Treick said it would be beneficial to the people living on Bull Mountain and in the unincorporated area to see a large scale map that shows the big picture of both roads. Associate Planner Tracy said there is no such map to that level of detail. He referred to the legal description boundary limits of the annexation. He said the City map shows the generalized line. For precise boundaries on where the road line is, "you would have to go the tax maps." There is no large scale map that shows that. Community Development Director Hendryx said staff would look into this and provide the best information they could.

Ms. Hamilton-Treick noted that the line shown down the middle of Beef Bend Road "is news to all of us." Associate

Planner Tracy said the line down Beef Bend Road is not the annexation line. Ms. Hamilton-Treick said then she is looking for an explanation.

Ms. Hamilton-Treick said the Wilson Ridge property only has two homes on the two acres. She said those homes are being demolished and 14 homes will be built right on Bull Mountain Road. She said this development is not compatible with the existing neighborhood. She said when she looked at the annexation line, she sees an area that is quite a distance from the other properties and also there is a very long easement – a long finger reaching down the back of these properties. She said she has been told that there has been a request to specifically remove this parcel from annexation right now as a gesture of good will and as a gesture of hope for future discussions and negotiations. She said she would like to reinforce that request that this particular parcel be removed from this process.

Interim City Manager Prosser asked who made the request?

Ms. Hamilton-Treick said Washington County.

Councilor Woodruff asked, "Washington County that it be removed from annexation..." Ms. Hamilton-Treick said you might want to discuss that with the Mayor.

Interim City Manager Prosser said he received a call last week from Washington County Administrator Charlie Cameron who indicated that County Chair Brian had proposed a deal to the Friends of Bull Mountain. Chair Brian was concerned that this would go against that deal. This is something the City is aware of, and the City has indicated they would be willing to talk about this, but until it became public knowledge and discussed publicly, the City would not sign off on any such deal. There has been no public discussion.

Ms. Hamilton-Treick said she wanted to correct a statement and said that Washington County did not cut any deal with the Friends of Bull Mountain. She said they did not speak for all the people of Bull Mountain, but they did initiate a discussion in an effort to resolve some of these issues once and for all with respect to "what our neighbors have asked for."

4. Alberta Rider School/Summit Ridge Annexation

City Recorder's Note: All opponents, on the testimony sign-in sheet for the Mountain View Estates annexation proposal, indicated their testimony applies to all annexations for Council Agenda Item 7 and their testimony is hereby incorporated by reference.

No additional testimony was given. Mr. Radley submitted some written testimony quoting the legal case he referenced earlier.

Rebuttal

Associate Planner Tracy acknowledge that annexation is an emotional issue for the residents of Bull Mountain. To refine this hearing and concentrate on the applications he advised these are four requests that were initiated by the property owners. He referred to the consents obtained by voters. These applications do not represent an aggressive attack on Bull Mountain.

Associate Planner Tracy noted there were comments concerning the approved conditions of development approval and the appropriateness of requiring annexation with certain development applications. For Council's consideration, that comment is not relevant or ripe for these particular applications. The applicant or appellant could have raised those issues during the appeal, when the developments were approved.

Associate Planner Tracy said there was another comment regarding the change in the process for the annexation hearings. This was somewhat of an experiment to facilitate public testimony to consolidate these hearings into one evening, so you would not have to come here multiple times and hear multiple presentations on the same issue. This also gives a broader perspective of all the annexations that are occurring in and around the same area.

Associate Planner Tracy noted the School District's application was prepared by the City to facilitate their ability to move into this school by October. He said the City understands the type of constraints the School District is up against and the City is eager for them to open the school. The School District did not initiate the annexation application, but did sign the consent. For that particular application and for a portion of Summit Ridge, the consent forms were signed by the property owners and the City has initiated the application to facilitate their ability to get their plats through and move into the school.

Associate Planner Tracy noted there was a question about the jurisdiction of Bull Mountain Road and that will not change as a result of the annexation. This would be handled through a different process between the County and the City.

Associate Planner Tracy referred to the testimony regarding change in zoning. The zoning in the Bull Mountain area is R-7 and this change occurred in 1997, when the City began doing planning services for the urban services area.

Associate Planner Tracy noted the Mayor was asked whether the City plans to continue to do annexation on Bull Mountain. The City has had a policy in place since 1997/98 to annex property that develops when it is adjacent to city limits. Until that policy changes, the City plans to continue annexation of those properties that are developing.

Associate Planner Tracy referred to Ms. Hamilton-Treick's testimony concerning Beaverton's actions to annex roads to create islands and how that created a stir with the State Senate. This is not what is being proposed here. The City is not extending cherry stems. There is a parcel on the Wilson Ridge Subdivision that looks like a cherry stem, but it is not a road nor is it right of way – it is part of the "parcel proper." The applicant has asked for the entire parcel to be annexed.

Associate Planner Tracy said the applicant for Wilson Ridge Subdivision might want to speak to the proposal for removal of one parcel as this was not represented in their application.

Associate Planner Tracy asked for the City Attorney to speak about the pre-condition of annexation on development.

City Attorney Ramis said there were three issues he noted that were legal in nature:

1. Whether the process being used affects in some way the appeal procedure to LUBA? He said, "No, this is the same as any other hearing of this type. We simply, hopefully tried to make it more convenient for people to testify by combining in one hearing process the opportunity to testify. The Council will in the end consider the record, consider the criteria, make a decision, adopt findings, and reduce those into writing in the same way that you do for any case and do that individually for each of the applications. So, those will be four separate actions, which can be appealed separately, just as if they were

held on different nights if we conducted the hearing process that way."

2. Whether the City had authority to conduct this proceeding without engaging in a double majority vote for the people inside and outside of the City? The statutory language says the legislative body of the City need not call or hold an election in the City in any contiguous territory proposed to be annexed or hold other hearings that are required by statute when all of the owners of the land in the territory, and not less than 50 percent of the electors residing in the territory, consent in writing to the annexation. The question is how many people have consented who are owners and how many have consented who are voters? If these tests have been met, then there is no election required.
3. A question on the validity of the consents signed. The conditions that were imposed were imposed in other land use proceedings that were not appealed. Therefore, the imposition of those conditions became final and they are enforceable. We are all bound by them, because there has been no appeal. There is no opportunity after 21 days to appeal them in separate proceedings. They are legally binding and required.

City Attorney Ramis noted another question is: What is the meaning or the intent to the intergovernmental agreements that exist with Washington County and is there authority in that process for conditioning projects? Those agreements are premised on the policy that these lands will be annexed by the City. Therefore, the action the City has taken with respect to the conditions are fully in accord with those agreements. The policy of those agreements is that annexation take place and so we have implemented that policy through that condition. In the City's view, the actions taken are not inconsistent with those agreements and are authorized by them.

City Attorney Ramis said there is statutory authority for consent agreements. When a City extends services, it can ask for annexation in return and that process is specifically authorized by statute.

Community Development Director Hendryx noted there was an issue about leaving the record open. In reference to voters on Bull Mountain, he noted the City Council is certainly aware that the election for Bull Mountain annexation was resoundingly defeated in

unincorporated Washington County. Tigard voters were in support of this continued action by the City; in excess of 60 percent of the Tigard voters were in support. Community Development Director Hendryx referred to boundary irregularities and said the staff report addresses this. To look at the whole picture in the unincorporated area the City is continuing to annex areas and there will always be slight irregularities and over a period of time those will be consolidated and straightened out.

Community Development Director Hendryx said there was a comment about notice not being given. The City followed the notice requirements; the site was posted. In response to a comment from Community Development Director Hendryx about notice within 500 feet, Associate Planner Tracy advised of a courtesy notice for property owners, but it is not a requirement of the Tigard code. Community Development Director Hendryx continued by saying that notice has been given and people are here tonight.

With regard to park deficiency, Community Development Director Hendryx said the Council is well aware of the park deficiency on Bull Mountain. The Park and Recreation Board (PRAB) has been charged with looking at addressing park needs for Tigard and in unincorporated areas, including Bull Mountain. The PRAB will report their findings to the City Council.

Community Development Director Hendryx said there was an issue with regard to zoning and 99W. Community Development Director Hendryx said that the City Council, next week, would be having a briefing on County issue papers that the County has prepared. There is a potential moratorium on public facilities' strategy for unincorporated Bull Mountain. The issue papers address 99W, long-range planning, and long-range park planning for the area. Mayor Dirksen said he encouraged interested parties who have not heard the contents of Washington County issue papers to come to this meeting to hear the presentation by Washington County.

City Attorney Ramis commented on the process. He noted there has been a request for a continuance to leave the record open for additional comments. By statute, the City is following the land use procedures, so given that request, the City is obliged to honor it. He said his recommendation is to allow seven days for the submission of written comments. After that time, the City Council is to review the comments as well as the record that has been created. At that time, the City Council will deliberate and give direction to staff on the preparation of the ordinances.

The next Council business meeting is August 23, 2005. Interim City Manager Prosser advised that the record will be left open for seven days, until the close of business, Tuesday, August 16, 2005. The staff will bring this back to Council on Tuesday, August 23.

The process would be for the Mayor to close the public hearing. On August 23, 2005, Interim City Manager Prosser advised no additional testimony would be received.

- f. Motion by Councilor Sherwood that the Council keep the record open for seven days for written comments and close the hearing. Motion was seconded by Councilor Woodruff.

Mayor Dirksen suggested an amendment to the motion, that the decision will be considered on August 23, 2005.

City Recorder Wheatley read the motion as amended for clarification:

"Motion to leave the record open for seven days to receive written comments, close the public hearing; and, the decision will be considered on August 23."

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

Community Development Director Hendryx noted staff will send out all the comments on next Friday, August 19, 2005 in the Council's newsletter packet so the City Council will receive the information before the August 23, meeting.

To clarify a question from Mayor Dirksen, City Attorney Ramis advised the City Council delay its deliberation until it has seen all of the evidence. Mayor Dirksen said this will give the City an opportunity to formalize all the comments and to review.

8. COUNCIL LIAISON REPORTS: None.

9. NON AGENDA ITEMS: None.

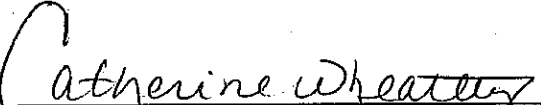
10. EXECUTIVE SESSION: Not held.

11. ADJOURNMENT

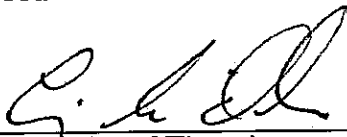
Motion by Councilor Wilson, seconded by Councilor Sherwood, to adjourn the meeting at 9:51 p.m.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes


Catherine Wheatley, City Recorder

Attest:



Mayor, City of Tigard

Date: 9.13.05

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